

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60088; File No. SR-NYSE-2009-56]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a Fee for Use of a Hand Held Device Configured to Provide Only Opening and Closing Order Imbalance Data

June 10, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 5, 2009, the New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a \$250 monthly fee for use of an NYSE e-Broker® Hand Held Device that is configured to provide access only to opening and closing order imbalance data. The text of the proposed rule change is available on the Exchange’s Web site (<http://www.nyse.com>), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The e-Broker® Hand Held Device (“Hand Held”), which is proprietary to the Exchange, provides Exchange floor brokers with messaging capability, the ability to receive orders electronically while on the floor of the Exchange, and access to market data. The Exchange charges an annual fee of \$5,000 per Hand Held. The Exchange now proposes to make available a reconfigured Hand Held that provides access to opening and closing order imbalance data, but without any of the other market data or other capabilities normally provided by Hand Helds. With effect from July 1, 2009, the Exchange proposes to charge a monthly fee of \$250.00 for each Hand Held that is configured to provide only opening and closing order imbalance data. Opening and closing order imbalance data is currently available on the trading floor only to floor brokers with access to the full service Hand Held. By making the reconfigured Hand Held available, the Exchange is enabling non-broker employees of member organizations, such as floor clerks, to have access to this information while working on the trading floor.<sup>3</sup> Floor clerks interact with customers on behalf of their Member Organization employers. Part of the service floor clerks provide to those customers is to act as a source of current information about market developments. Consequently, floor clerks need to have access to all relevant information about market activity, including opening and closing trade imbalances. Currently, floor clerks can access opening and closing trade imbalance information either by speaking to a floor trader who has a full-service Hand Held or by accessing Bloomberg, which requires the firm to maintain a costly subscription. The proposed reconfigured Hand Held will create efficiencies as floor brokers will no longer have to devote time to communicating trade imbalance data to floor clerks. It will also provide a low cost alternative to the expense of subscribing to Bloomberg for the sole purpose of accessing opening and closing trade imbalance data.

<sup>3</sup> While it is believed that Bloomberg is the only market data vendor that currently provides its customers with opening and closing order imbalances data, the Exchange provides this information feed to all market data vendors for their distribution to subscribers.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6<sup>4</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>5</sup> in general and Section 6(b)(4) of the Act<sup>6</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of dues, fees and other charges as all Member Organizations will be able to avail of the Hand Held service on the same terms.

#### B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>7</sup> and Rule 19b-4(f)(2) thereunder.<sup>8</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

<sup>4</sup> 15 U.S.C. 78f.

<sup>5</sup> 15 U.S.C. 78a *et seq.*

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR-NYSE-2009-56 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2009-56. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro/shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-NYSE-2009-56 and should be submitted on or before July 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9-14171 Filed 6-16-09; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60093; File No. SR-CBOE-2009-036]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Options Regulatory Fee

June 10, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,<sup>1</sup> notice is hereby given that on June 4, 2009, Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") proposes to amend its Fees Schedule relating to the Options Regulatory Fee. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/legal>), at the Exchange's Office of the Secretary and at the Commission.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

###### 1. Purpose

The Exchange charges an Options Regulatory Fee ("ORF") of \$.006 per contract to each member for all options transactions executed by the member that are cleared by The Options Clearing

Corporation ("OCC") in the customer range, excluding Options Intermarket Linkage Plan ("Linkage") orders. The ORF is imposed upon all such transactions executed by a member, even if such transactions do not take place on the Exchange. The ORF is collected indirectly from members through their clearing firms by OCC on behalf of the Exchange. There is a minimum one-cent charge per trade.<sup>2</sup>

The Exchange has reevaluated the current amount of the ORF in light of better than expected trading volume so far in 2009. The Exchange stated in the Original Filing that the ORF is set at a rate that the Exchange anticipates will approximately replace the amount of revenue that would be lost from the elimination of RR Fees.<sup>3</sup> The Exchange has determined that the ORF would generate revenue in excess of the amount of annual revenue the Exchange used to receive from RR fees if the ORF remained at \$.006 per contract for all of 2009. Accordingly, the Exchange proposes to reduce the ORF from \$.006 per contract to \$.004 per contract. The fee change would become operative on August 1, 2009, in order to give members time to implement the revised fee.

The Exchange will continue to monitor the amount of revenue raised by the ORF to ensure that it is meeting its revenue benchmarks and may make other adjustments to the fee in the future as necessary. The Exchange anticipates providing notice of any ORF changes as far in advance of the effective date of the new rate as possible.

###### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 ("Act"),<sup>4</sup> in general, and furthers

<sup>2</sup> The ORF was established in October 2008 as a replacement of Registered Representative ("RR") fees. See Securities Exchange Act Release No. 58817 (October 20, 2008), 73 FR 63744 (October 27, 2008) ("Original Filing"). The ORF was to be effective January 1, 2009. In December 2008 and January 2009, the Exchange filed proposed rule changes waiving the ORF for January and February, to allow additional time for the Exchange, OCC and firms to put in place appropriate procedures to implement the fee. See Securities Exchange Act Release No. 59182 (December 30, 2008), 74 FR 730 (January 7, 2009), and Securities Exchange Act Release No. 59355 (February 3, 2009), 74 FR 6677 (February 10, 2009). To avoid a regulatory revenue shortfall for 2009 due to the waivers of the fee, the Exchange increased the ORF for 2009 from \$.0045 per contract to \$.006 per contract. See Securities Exchange Act Release No. 59427 (February 20, 2009), 74 FR 9013 (February 27, 2009).

<sup>3</sup> Original Filing at 63745.

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).